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November 25, 2002

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Written Ex Parte*
UNE Triennial Review – CC Docket No. 01-338
Local Competition – CC Docket No. 96-98
Deployment of Advanced Wireline Services – CC Docket No. 98-147

Dear Ms. Dortch:

Attached for inclusion in the record of the above-referenced proceedings pursuant to 47 C.F.R. § 1.1206(b) is a letter to the Honorable Michael Powell, Chairman of the FCC, from Donna Sorgi, Vice President of Federal Advocacy for WorldCom, Inc.

Sincerely,

/s/ Ruth Milkman
Ruth Milkman

Attachment

cc: Scott Bergmann
Matthew Brill
Michelle Carey
Jeffrey Carlisle
Jordan Goldstein
Daniel Gonzalez
Linda Kinney
Christopher Libertelli
William F. Maher
Jeremy Miller
Thomas Navin
Brent Olson
Robert Tanner

November 25, 2002

The Honorable Michael Powell
Chairman
Federal Communication Commission
445 12th Street, SW, Room TWB-204
Washington, DC 20554

Re: SBC Proposal With Respect to UNE-P

Dear Chairman Powell:

On November 18, 2002, SBC offered a proposal with respect to the unbundled network elements platform (UNE-P) that is transparently anticompetitive.¹ There are two ways to kill incipient local mass markets competition: eliminate UNE-P or price UNE-P at levels that prohibit competitive entry. SBC has proffered both. Simply stated, SBC's recommended approach completely ignores the statute, and seeks outright elimination of competition in the residential and small business mass market. Had SBC actually sought to be constructive, it would have made a proposal that addresses the major stated objectives of the Commission in this proceeding: (1) fostering mass market competition; (2) promotion of facilities deployment; and (3) consistency with the *USTA* decision.² The SBC proposal furthers none of these objectives.

Residential and small business customers currently enjoy robust competition for long distance services, and are just beginning to see competition take hold for local services, as competitive carriers offer UNE-P-based services, such as MCI's The Neighborhood. SBC's proposal for a "Sustainable Wholesale Model" would reverse these encouraging developments and effectively extinguish residential and small business competition for both local and long distance services. SBC and other incumbent local exchange carriers (LECs) would no longer face competition to serve small business customers, as the SBC proposal would reverse immediately all incumbent LECs' obligations to provide UNE-P for business customers. Competition to serve residential customers would also disappear because SBC's proposed wholesale rate of \$26 for the equivalent of UNE-P would eliminate any realistic opportunity for sustainable entry by competitors. Indeed, the SBC *ex parte* provides absolutely no legal or economic

¹ See "Development of a Sustainable Wholesale Model," attached to *Ex Parte* Letter from Jay Bennett, SBC, to Marlene H. Dortch, CC Dkt. No. 01-338 (Nov. 19, 2002).

² *USTA v. FCC*, 290 F.3d 415 (D.C. Cir. 2002).

explanation for its selection of \$26. Rather than achieving its purported goal of a sustainable wholesale market, SBC's proposal instead would achieve a sustainable monopoly market by insuring that local services revert to SBC's singular control.

Consider the implications of SBC's proposal in its own region. SBC's proposed \$26 rate represents, on average, a 33% increase in the cost-based UNE-P rates established by the state commissions throughout SBC's region.³ It is even \$6 more than the rate that SBC told investors was reasonable.⁴ SBC's proposed rate is also at or above the retail residential revenue stream available to competitors offering UNE-P-based service in every state in the SBC region.⁵ In the face of negative margins, MCI and other carriers currently offering competitive residential local service would be forced to withdraw their offerings. Consequently, customers seeking local/long distance packages or "any distance" service would have a choice of one carrier: SBC.

SBC's proposal also has the deleterious effect of decreasing, rather than increasing, the likelihood of local facilities deployment for mass market services. Today, competitors cannot access switching from alternative sources because, among other things, SBC and the other incumbent LECs have not designed scalable and efficient loop provisioning processes. The record in this proceeding contains overwhelming evidence

³ The average UNE-P rate in SBC's region is \$19.52.

⁴ SBC completely fails to justify its proposed rate and also ignores its prior statements that a \$20 UNE-P rate would be reasonable and offer competitors a meaningful opportunity to compete. See Banc of America Securities Equity Research U.S., Research Brief, SBC Communications Inc., Highlights from the BAS 32nd Annual Investment Conference, at 1-2 (Sept. 23, 2002), attached to *Ex Parte* Letter from Christopher J. Wright, Counsel to Z-Tel Communications, to Marlene Dortch, CC Dkt. No. 01-338 (Sept. 30, 2002); see also *Ex Parte* Letter from Joan Marsh, AT&T, to Marlene Dortch, CC Dkt. No. 01-338, at 1 (Nov. 21, 2002) (estimating that SBC's proposed rate would result in an average net margin available to competitors across all SBC states of negative 31%); UBS Warburg Global Equity Research Report, *Telco Wake-Up Call*, at 2 (Nov. 21, 2002) ("Increasing the rates competitors are charged by 63% (based on our estimate for an average UNE-P rate of roughly \$16/month) as the proposed plan suggests would make it uneconomical").

⁵ The Bell Operating Companies have argued that state commissions are setting UNE rates at levels that are lower than incumbent LEC costs, in order to create a margin between those UNE rates and retail rates, and that the state commissions should instead raise retail rates. The more likely explanation is that the state commissions have concluded that incumbent LECs' forward-looking costs are in fact lower than the costs advocated by the incumbent LECs, and have set the UNE rates properly. It seems highly unlikely that *every* state commission in SBC's region has gotten UNE rates wrong, as SBC would like the FCC to believe.

that there are a series of economic and operational barriers to entry that must be reduced substantially or eliminated before competitive carriers can execute business plans that depend on the use of their own local facilities (*e.g.*, through UNE-L) in order to serve mass market customers.⁶ SBC's proposal would do nothing to erode or eliminate these deterrents to entry. Instead, its proposal would eliminate the only entry vehicle that has enabled local mass markets competition which, if permitted to develop, will result in new facilities deployment. Consequently, SBC's proposal would completely undermine the Commission's efforts to promote the deployment of additional local facilities.

Finally, SBC's proposal does not even pretend to be consistent with the *USTA* court's instructions with respect to the impairment analysis required by the statute. The *USTA* decision explicitly states that Congress made "'impairment' the touchstone" of the analysis under Section 251(d)(2).⁷ SBC, however, does not explain how, on the basis of this record, the Commission could possibly conclude on a nationwide basis that in two years, requesting carriers would not be impaired without access to unbundled switching. The *USTA* court also directed the FCC to ensure that the impairment analysis is conducted in a geographically granular manner. Here, by contrast, SBC proposes to eliminate access to unbundled switching on a nationwide basis by a date certain, without regard to individual circumstances.

In short, SBC's proposed "solution" to the UNE-P debate clearly would spell the end of residential and small business competition for both local and long distance services. The Commission should summarily reject this proposal and entertain proposals that are legal, based in fact, and that will lead to additional facilities-based competition.

Respectfully submitted,

/s/ Donna Sorgi
Donna Sorgi

⁶ See *Ex Parte* Letter from Marc Goldman, Counsel to WorldCom, to Marlene Dortch, at 3-7 (Nov. 13, 2002) (summarizing the record in the *UNE Triennial* proceeding with respect to the impairment analysis for switching).

⁷ *USTA v. FCC*, 290 F.3d at 425.